I am writing regarding the FCC's "restoring network freedom" initiative, which proposes to eliminate common carrier status from Internet Service Providers. To give some background: I have been involved with the internet since before it was a commercial service, as an employee of one of the first companies with a commercial Internet connection (Thinking Machines, Inc.), and as a major contributor to the Apache Web Server, for which I am a co-recipient of the ACM System Software award.

The FCC's proposal to remove Common Carrier status from ISPs presents itself as restoring the regulatory climate of the early days of the commercial internet. But in fact, the FCC pursued a regulatory regime throughout that time which allowed them to take action to preserve net neutrality – in particular, to prevent Internet Service Providers to degrade or bar particular services or protocols – and several such actions were in fact taken. The FCC did not choose to regulate ISPs as common carriers in order to impose these rules; they were already in place. Instead, it did so because it was the only way allowed by the courts (particularly the Federal Circuit, in Verizon v. FCC, 2014) to continue restrictions that were already in place. So, the FCC's proposed new rules do not restore some imaginary status quo ante; instead, it is the FCC which is now proposing a new, dangerous regulatory scheme which has not heretofore existed, and which risks seriously harming the public.

To go through these points in somewhat more detail:

The reason that the Internet has been a generator of new forms of commerce, new companies, and new and vital discussion forums has been, historically, that any internet user could connect to any internet service, with each having physical connections and contractual arrangements only with their own Internet Service Provider. Thus, a company wanting to offer a new service has to make arrangments only with its own ISP, not with the several ISPs used by each of its customers.

The reason that this has worked is that the ISPs were not allowed to block traffic involving a particular service or protocol, or to require extra fees to carry it. And well before starting to regulate ISPs under Title II, the FCC had already taken regulatory action to prevent this kind of behavior. To cite two examples:

- In 2005, the FCC acted to prevent Madison River Communications, a local ISP, from blocking voice-over-IP services that could compete against their own voice phone offerings.
- In 2008, the FCC fined Comcast $16 million for blocking certain file-sharing services.

This line of decisions was given more structure in the FCC's 2010 Open Internet Order, but the principle that the FCC could and would act to preserve access by any customer to any lawful internet service was already, by that point, established.

Now, to this point, ISPs had not been regulated under Title II. However, in 2014, the Federal Circuit ruled (in the aforementioned case of Verizon v. FCC) that the only way that they could continue to regulate ISPs the way they had been doing for years was to move them to Title II.

The important point here is that Title II regulation was not adopted in order to change the regulations on ISPs; instead, it was adopted to try to preserve the prior regulatory regime in a new legal environment. And that prior regulatory regime had been created in response to demonstrated abuses – such as Madison River blocking VOIP phone calls to trap its customers on its own inferior offerings – which would almost certainly have proliferated widely if not blocked.

The current proposal would have the effect of removing those blocks. It is this action which would create a new, untried, and dangerous regulatory regime, in which large ISPs (many of which are effective monopolies in most of their territories) to limit their customers' access to new or existing internet services. And the growth of the Internet which the FCC says it hopes to enable by allowing these blocks actually occurred in an environment in which they did not occur, and were squelched by regulatory action when they arose.

Thus, the FCC is proposing a regulatory wild west, promising benefits which we already got without it, and heedless of real dangers which arose in the past, and were only stopped by regulatory action which it proposes to abandon. This is a bad idea, and should not go forward.